

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In The Matter of

City of Hampton
22 Lincoln St., 4th Floor City Hall
Hampton, VA 23669

Proceeding Under Sections 308 and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318
and 1319(a)

FINDINGS OF VIOLATION
ORDER FOR COMPLIANCE
AND
REQUEST FOR INFORMATION

RECEIVED

2011 SEP 28 PM 3:20

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

I. STATUTORY AUTHORITY

1. The following Findings of Violation and Order for Compliance ("Order") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "the Act"). The Information Request is issued under the authority vested in EPA by Section 308 of the CWA, 33 U.S.C. § 1318. The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated it to the Director of the Water Protection Division of EPA Region III.

II. BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with specified requirements of the Act, including a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342 and 40 C.F.R. Part 122.
3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(a), the Commonwealth of Virginia has been authorized by EPA to administer the NPDES program within the Commonwealth of Virginia.
5. Pursuant to Section 309(a)(1) of the Act, 33 U.S.C. § 1319(a)(1), EPA is authorized to enforce the terms of any permit issued by a State under an EPA- approved permit program.
6. A NPDES permit is required for discharges from, among other entities, a large or medium municipal separate storm sewer system, 40 C.F.R. §122.26(a).
7. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).
8. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. The City of Hampton, Virginia (“Respondent” or “Hampton”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent owns, and through its Department of Public Works, Fire Department, Codes Compliance Department, Planning Department, Parks Department, the Hampton Clean City Commission, Fleet Maintenance Department and the 311 Call Center, operates a MS4 located in the City of Hampton, VA.
12. Hampton was issued a Virginia Pollution Discharge Elimination System Permit, VA0088633 (the “MS4 Permit”) which regulates discharges from Hampton’s MS4 by the Virginia Department of Environmental Quality (“VA DEQ”). The MS4 Permit has an effective date of March 8, 2001 and an expiration date of March 8, 2006. In January of 2005, administration of the MS4 program was transferred from VA DEQ to the Virginia Department of Conservation and Recreation (“DCR”). DCR has not yet issued a new MS4 permit to Hampton; therefore, Hampton is currently operating under the conditions of MS4 Permit VA0088633.

13. From March 31-April 1, 2010, a compliance inspection team comprising of authorized representatives of EPA and DCR inspected the MS4 in Hampton. During this inspection, EPA and DCR reviewed Respondent's MS4 program.
14. As part of its application for an MS4 permit, Hampton developed a Storm Water Management Program (the "MS4 Plan") pursuant to 40 C.F.R. 122.26(d)(2)(iv)(A)(2), which requires "A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment."
15. Part I.A.1.a (2) of the MS4 Permit requires that Hampton adhere to and enforce the MS4 Plan.

III. FINDINGS OF VIOLATION

Violation I: Failure to Maintain Records of Site Plan Reviews

16. Section 7.2.2 of the MS4 Plan requires that development site plans be reviewed for consistency with City and State water quality requirements.
17. Section 7.2.2 of the MS4 Program Plan requires the Department of Public Works Land Development Services to maintain site plans on file with records of review.
18. Prior to EPA's inspection, the EPA inspection team requested records of site plan reviews. Hampton did not produce any records of site plan reviews prior to or during EPA's inspection.
19. By not maintaining records of site plan reviews, Hampton violated Part I.A.1.a (2) of its MS4 Permit.

Violation II: Failure to Implement the Current Field Screening Procedures

20. Part I.A.1.b(2) of Hampton's MS4 Permit requires Hampton to continue the implementation of the current field screening procedures for identifying unauthorized non-storm water discharges and improper disposal into the storm water system. Hampton's current field screening procedures are embodied in the Field Screening Plan and Procedures Manual, which is Appendix C of the MS4 Plan.
21. Section F of the Field Screening Plan and Procedures Manual provides that if testing results in any values that are a cause for concern, a retest of that constituent must be immediately conducted. If a second test shows substantially different results, a third test

must be done. All results must be recorded. If the second test verifies the first test, or if the third test still shows values which are a cause for concern, a sample must be taken immediately for laboratory verification.

22. The City Storm Water Manager verbally told the EPA inspection team that a pH value less than or equal to 5.0 standard units ("s.u.") was the City's cause for concern threshold. At 8:15 a.m. on March 11, 2009, a pH value of 5.1 s.u. was recorded during field screening of an observed dry weather flow at 106 Garrett Drive. At 2:00 pm, the City staff returned to 106 Garrett Drive, conducted another test and found a pH level of 4.7 s.u., which exceeds the cause for concern threshold of 5.0 s.u. City staff did not immediately take another test to address the discrepancy between the two results.
23. By not taking an additional test immediately after the second test indicated a pH level that met the cause for concern threshold, Hampton failed to implement the Field Screening Plan and Procedures Manual, and therefore violated Hampton's MS4 Permit.

Violation III: Failure to Adhere to Storm Water Related Ordinances

24. Part I.A.1.a(2) of the MS4 Permit requires Hampton to adhere to all storm water related ordinances.
25. Hampton City Ordinance Section 33.1-12.1 states that it is unlawful to put, throw, place or deposit or allow to be put, thrown, placed or deposited any substance or pollutant in any area which drains into the storm water system or in any manner pollute the storm water system.
26. During the EPA inspection, the EPA inspection team observed a city official washing a police car at City Fleet Services Center, and the resulting wash-water flow entering a storm water inlet.
27. During the EPA inspection, the EPA inspection team also observed the application of herbicides to the brick sidewalks around City Hall at 22 Lincoln Street, which drain to MS4 inlets nearby. The application of herbicides was not selective and covered the entire brick sidewalk surface. A City Parks and Recreation Department staff member explained to the EPA inspection team that the herbicides consisted of a mixture of Roundup and a marking chalk that turned the sidewalks yellow so that staff could see where the mixture had been applied. The City Parks and Recreation Department staff member indicated that the marking chalk colorants and herbicides would wash away into the MS4 inlets during the next rain event.
28. By failing to adhere to Hampton City Ordinance Section 33.1-12.1, Hampton violated its MS4 Permit.

Violation IV: Failure to Develop Written Standard Operating Procedures for Illicit

Discharge Source Identification

29. Hampton's MS4 Plan Section 5.2.3 requires that written standard operating procedures for illicit discharge source identification be developed in the second year of the permit cycle.
30. Hampton obtained its current MS4 permit on March 8, 2001. The permit was effective on that date. Accordingly, standard operating procedures should have been developed in the second year of the permit cycle, between March 9, 2002 and March 8, 2003.
31. By not developing written standard operating procedures for illicit discharge source identification by March 8, 2003, Hampton violated its MS4 Permit.

Violation V: Failure to Provide Copies of Erosion and Sediment Control Inspection Reports to Construction Site Contractors

32. Hampton's MS4 Plan Section 6.3.1 requires that copies of erosion and sediment control inspection reports are provided to construction site contractors.
33. During the EPA Inspection, Hampton's Erosion and Sediment Control Inspector admitted that he does not provide copies of erosion and sediment control inspection reports to construction site contractors.
34. By not providing copies of erosion and sediment control inspection reports to construction site contractors, Hampton violated its MS4 Permit.

Violation VI: Failure to Conduct Erosion and Sediment Control Inspections of Construction Sites at Required Frequency

35. Hampton's MS4 Plan Section 6.3.1 requires that erosion and sediment control inspectors perform inspections in accordance with State requirements.
36. 4 VAC 50-30-60.B. requires, in relevant part, Hampton to perform periodic inspections at least once in every two-week period [and] within 48 hours following any runoff producing storm event, unless an alternative inspection program is approved by the Virginia Soil and Water Conservation Board prior to implementation.
37. Hampton does not have an alternative inspection program that has been approved by the Virginia Soil and Water Conservation Board.

38. During the EPA Inspection, Hampton's Erosion and Sediment Control Inspector admitted that all construction sites within Hampton are not inspected at least once in every two-week period [and] within 48 hours following any runoff producing storm event.
39. By not providing inspecting all construction sites at least once in every two-week period [and] within 48 hours following any runoff producing storm event, Hampton violated its MS4 Permit.

IV. ORDER

40. AND NOW, this 28th day of September, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to do the following:
41. Within thirty (30) days of the effective date of this Order, Respondent shall comply with VPDES Permit No. VA0088633.
42. Within fourteen (14) days of the effective date of this Order, Respondent shall submit to EPA certification of Respondent's intent to comply with this Order. A principal executive officer or a ranking elected official must sign on behalf of the Respondent. The certification shall be submitted to:

Andrew Dinsmore (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

V. REQUEST FOR INFORMATION

43. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
- (a) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;
 - (b) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
 - (c) any requirement under Section 308 of the CWA; and
 - (d) carrying out Sections 305, 311, 402, 404, and 504 of the CWA.

44. Failure to respond as directed to a CWA Section 308 request is punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment. Providing misleading or false information may subject you to civil and criminal sanctions. The information you provide may be used by EPA in administrative, civil or criminal proceedings.
45. You may, if you desire, assert a business confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. Part 2 Subsection B. Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If no claim of confidentiality accompanies the information requested herein when it is received by EPA, it may be made available to the public by EPA without further notice. You may not withhold any information from EPA on the grounds that it is confidential business information. This inquiry is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act U.S.C. Chapter 35. (See 5 C.F.R. Section 1320.3(c)).

Instructions

46. Identify each person responding to any question contained in this Information Request on behalf of the Respondent, as well as each person consulted in the preparation of the response.
47. For each question, identify each document consulted, examined, or referred to in the preparation of the response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question.
48. Indicate on each document produced in response to this Information Request, or in some other reasonable manner, the number of the question to which it corresponds.
49. To the extent information requested herein was previously provided to EPA by City of Hampton, there is no need to provide it again, but rather identify the information and the date it was previously provided.
50. If requested information or documents are not known or are not available at the time of your response to this Information Request, but later become known or available, the Respondent must supplement its response to EPA. Moreover, should the Respondent find at any time after submission of its response that any portion is or becomes false, incomplete, or misrepresents any facts, the Respondent must provide EPA with a corrected response as soon as possible.

51. All submissions provided pursuant to this request shall be signed and dated by a principal executive officer or a ranking elected official to include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. I certify as having responsibility for the persons who, acting under my direct instruction, made the verification that this information is true, accurate, and complete."

Signed _____
Title _____

52. Submit your response to the following individual:

Andrew Dinsmore (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

53. If you have questions regarding this Information Request, you may contact Mark Bolender of the Office of Regional Counsel at (215) 814-2642.

Definitions

54. The term "identify" with respect to a natural person means to provide that person's name, address, telephone number, title, and relationship to Respondent. The term "identify" with respect to a business entity means to provide that entity's name, address, and relationship to the Respondent, and to provide the name, address, telephone number, and title of an individual who can provide information related to, and on behalf of, the entity.

Request

55. AND NOW, this 28th day of September, 2011, Respondent is hereby directed, pursuant to Section 308 of the CWA, 33 U.S.C. Section 1318, to provide the following information:
56. Provide all information regarding annual storm water training for employees and identify all employees who receive annual storm water training.
57. Identify all employees, contractors, and subcontractors responsible for applying pesticides, and indicate whether such individuals have received training on pesticide application and/or state certification. Provide all other information regarding pesticide application training for employees.

58. Identify all employees responsible for performing storm water inspections at industrial facilities. Provide all information about storm water training such individuals have received
59. Provide all information regarding all Best Management Practices maintenance inspections that occurred on March 5, 2010, including the number of inspections conducted, the location of each inspection, any maintenance and repair needs found during such inspections, and all documentation of such inspections.
60. Provide the list of facilities that meet the categories defined in Part I.a.1.c. of Hampton's MS4 Permit. Specify those facilities that were identified upon the list creation (or at the time of MS4 Permit issuance, whichever is later), as well as the dates when new or previously unidentified facilities were added to the list. Provide all information about any storm water inspections at such facilities.
61. Provide all information regarding construction site erosion and sediment control inspection tracking, including the frequency at which inspections are conducted.
62. Your response must be submitted within 30 days of receipt of this Request for Information.

VI. GENERAL PROVISIONS

63. Issuance of this Finding of Violation, Order for Compliance, and Request for Information shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply with this Order or the Act may result in a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent will be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
64. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans pursuant to Section 508 of the Act.
65. Respondent shall permit EPA or its authorized representative to inspect any site at reasonable times to confirm that Respondent is in compliance with this Order and with any applicable permit. EPA reserves all existing inspection authority.

66. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve Respondent of their obligations to comply with any applicable Federal, state, or local law or regulation.
67. Violation of the terms and conditions of this Finding of Violation, Order for Compliance, and Request for Information constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

EFFECTIVE DATE

This FINDINGS OF VIOLATION, ORDER FOR COMPLIANCE, AND REQUEST FOR INFORMATION is effective upon receipt.

Date: 9/28/11



John M. Capadusa, Director
Water Protection Division
EPA Region III